June 12, 2018

Submitted Electronically
Alfred M. Pollard, General Counsel
Attn: Comments/RIN 2590-AA83
Federal Housing Finance Agency
400 Seventh Street SW
Eighth Floor
Washington, D.C. 20219

Re: Proposed Rulemaking and Request for Comments: Affordable Housing Program Amendments (RIN 2590-AA83)

Dear Mr. Pollard:

The Federal Housing Finance Agency (FHFA) requested comments on its Proposed Rulemaking on amendments to the Affordable Housing Program (AHP) regulation published on March 14, 2018 (the Proposed Rule)[1] and re-published with a correction and deadline extension on May 2, 2018.[2] On behalf of the Federal Home Loan Bank of Topeka's Affordable Housing Advisory Council (AHAC), I want to express my appreciation for the opportunity to comment on the Proposed Rule and the extension of the comment period deadline to June 12, 2018.

Some of the provisions in the Proposed Rule are beneficial to the AHP, and the AHAC recommends their inclusion in the Final Rule. The AHAC does have concerns about the impact of other proposed provisions. Specifically, some proposed revisions do not enhance the flexibility and responsiveness of the AHP, expose the Federal Home Loan Banks (FHLBanks) to new risks, and reduce the transparency of the AHP. The AHAC respectfully submits the following commentary on selected provisions in the Proposed Rule.

I. Beneficial provisions the AHAC recommends be preserved.

[1] 83 Fed. Reg. 11344 (Mar. 14, 2018).
[2] 83 Fed. Reg. 19188 (May 2, 2018).

The following provisions in the Proposed Rule are positive revisions to the AHP regulation, and the AHAC recommends they be included in the Final Rule.

a. Eliminate retention agreements for owner-occupied units.

The elimination of retention agreements for owner-occupied units will enhance wealth accumulation by program participants by allowing them to retain the benefit of any property value increases. Removal of the retention agreement requirement will also facilitate the use of the AHP and Homeownership Set-aside Programs (HSP) to assist low- to moderate-income homebuyers and homeowners on tribal trust lands in FHLBank Topeka's district. Currently, AHP owner-occupied and HSP grants are not available to households on tribal lands in the FHLBank Topeka district because FHLBank cannot file a retention agreement for those households. Removal of the retention agreement requirement eliminates this hurdle. Finally, this proposal will reduce the burden of filing and releasing the retention agreements and provide relief to program administration so that resources may be dedicated to other program areas. The AHAC recommends this proposed revision be included in the Final Rule.

b. Allow increases to HSP Allocation and subsidy per household.

The AHAC supports allowing an FHLBank to elect to increase its HSP allocation from 35 to 40 percent of the annual AHP accrual and increase the maximum HSP subsidy per household from $15,000 to $22,000, with the subsidy limit automatically adjusted with changes to the FHFA Housing Price Index. The subsidy increase will help address the amount of subsidy required for down payment and closing cost assistance in high-cost areas and make housing more affordable for low- to moderate-income households. The subsidy increase will also help address owner-occupied rehabilitation, which the AHAC has identified as an increasing burden in the FHLBank Topeka's district because of the rising costs of rehabilitation and the number of homes in need of repairs. The automatic increase would allow the HSP subsidy per household to be increased without revising the AHP regulation, promoting efficiency by decreasing the need for future regulatory revisions to keep the regulation current and applicable.

c. Align AHP project monitoring requirements with other federal funding programs.

Aligning AHP project monitoring requirements with other federal funding programs as proposed will reduce redundancies in the collection and analysis of income documentation for AHP projects. Alignment of project monitoring requirements will reduce the administrative time required by project staff to manage compliance with multiple funders. The AHAC recommends including this revision in the Final Rule

d. Allow owner-occupied rehabilitation as a permissible use in the first-time homebuyer allocation requirement.

Including owner-occupied rehabilitation as a permissible use in the first-time homebuyer allocation requirement benefits the HSP program and should be included in the Final Rule. This proposed change will enable more HSP funds to be used for owner-occupied rehabilitation at a time when owner-occupied rehabilitation has been identified as a substantial need in virtually all FHLBank districts due to an aging housing stock (the median age of which is 37 years) occupied by very low- to moderate-income households.

II. Proposed revisions AHAC recommends be revised or excluded from the Final Rule.

The following provisions in the Proposed Rule do not enhance the flexibility and responsiveness of the AHP, expose the FHLBanks to new risks, and reduce the transparency of the AHP, and the AHAC recommends they be revised as discussed below.

a. The proposed outcome requirements increase complexity and decrease transparency.

The proposed outcome requirements are prescriptive, increase AHP complexity and decrease transparency, do not add flexibility to the administration of the AHP, and diminish the AHAC's role in identifying the needs of the district. By holding the FHLBanks to a national standard outcome, the proposed outcome-based requirements diminish the ability of FHLBanks to design their AHP program to meet the local needs of the district. The proposed changes also increase program complexity by requiring mathematical calculations to determine satisfaction of dollar amount and number of units outcomes prior to granting project awards. The proposed revisions damage not only the current simplicity of the AHP programs, but also the transparency of project award recommendations. The Proposed Rule eliminates the current predictable and transparent practice of awarding projects in descending order of scores and replaces it with a practice that allows lower scoring projects that contribute to meeting outcomes to be funded over a higher scoring project that does not contribute to meeting the mandated outcomes. The AHAC is concerned the unpredictable and opaque nature of award calculations may foster distrust of the process and damage relationships with community partners. Finally, the AHAC's role is diminished because the majority of the AHP awards must go to applicants that meet the outcomes which may not align with the needs of the district as identified by the AHAC. We recommend the FHFA eliminate this proposed revision and adopt a scoring-based methodology for determining AHP awards.

b. The potential imposition of monetary penalties may detrimentally influence how FHLBanks conduct their AHP.

The remedial actions for noncompliance with outcome-based requirements create the possibility of monetary penalties and create a new risk for the FHLBanks. The unintended consequence of the outcome requirements will be the FHLBanks' efforts to mitigate this new risk. FHLBanks may adjust scoring criteria to ensure attainment of the outcomes rather than to address the district's affordable housing needs, which neglects regional differences and makes the AHP a one-size-fits-all national program. The AHAC recommends the FHFA eliminate the monetary penalties from the Final Rule and adopt a scoring-based methodology.

c. **Minimum outcome eligibility thresholds will lead to inefficiency and negatively impact the long-term viability of AHP and AHP-assisted projects.**

Two proposed outcome eligibility thresholds will hinder the efficient administration of the AHP Program and impact the long-term viability of AHP projects. First, the proposed minimum outcome eligibility threshold requires supportive services to be provided or made available to project residents and increases the portion of units from 20 to 50 percent for projects serving the Homeless and Special Needs populations. Requiring supportive services be provided to these populations will add to FHLBank's administrative burden as it will require additional monitoring to verify supportive services were provided or were made available to project residents, homebuyers, or homeowners. Additionally, the additional cost of providing supportive services to a greater percentage of project residents may jeopardize the long-term financial viability of the project. Second, increasing the requirement threshold for rental projects from 20 percent of units reserved for occupancy by households at or below 50 percent of Area Median Income (AMI) to 20 percent of units reserved for occupancy by households at or below 30 percent of AMI could negatively impact the cash flow and financial feasibility of rental projects. The long-term viability of a project may be negatively impacted and the purpose of AHP defeated. The AHAC recommends maintaining the current 20 percent reservation requirement for very low-income households.

d. **Expanding collection efforts to include the financial capacity of the project sponsor or owner increases administrative burden and may decrease AHP applications.**

The proposed revisions expand reasonable collection efforts of the AHP award to include FHLBank's consideration of the financial capacity of the project sponsor or owner, and other assets of the project sponsor or owner. Currently, FHLBank reviews only the financial capacity of the project. Expanding the requirements of reasonable collection efforts to include FHLBank's review of the financial capacity and assets of both the project sponsor and project owner increases FHLBank's administrative burden and may decrease the number of sponsors or owners willing to submit applications for AHP subsidy. The AHAC recommends retaining the current language in 12 C.F.R. 1291.8(c)-(d).

e. **Proposed timelines for publishing identified needs for AHP programs limits program flexibility and should be eliminated or remain unchanged from the existing regulation.**

The requirement to publish the identified needs for the FHLBank's General Funds and HSP in the Targeted Community Lending Plan (TCLP) six months prior to the plan year limits the flexibility of the AHP and does not allow program adjustments based on the results of the current AHP and HSP. The requirement that the FHLBank would not be allowed to establish or administer a Targeted Fund unless at least 12 months have passed since the publication of the TCLP makes it impossible to implement a AHP program that responds quickly to changing needs in the district. If, for example, a natural disaster were to affect an area within the FHLBank's district, the publication requirements would delay getting needed funds to the affected area until well after the greatest need for funds has passed.

In the absence of relief from the outcome requirements in proposed §1291.48, we request that the requirements of the TCLP remain unchanged from the existing regulation, except in the event that an FHLBank offers a Targeted Fund. In that instance, an FHLBank should document the need that is being addressed by the Targeted Fund in the TCLP, but without the six- or 12-month notice requirements.

III. Conclusion

The AHAC appreciates the FHFA's efforts, especially the cooperation shown to the FHLBanks and the AHACs during the development of the proposed enhancements to the AHP regulation. We believe that adjustments can be made to the proposed rule that will allow the FHLBanks to build upon the AHP's success, efficiently respond to regional housing needs, and streamline the administration of the AHP to benefit of our members, sponsors and stakeholders. Thank you for your consideration of these comments.

Sincerely,

Claudia Brierre

Claudia Brierre
AHAC Chair